JUDGE DANIELS

05 CV 8324 COPY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-- X

JONATHAN D. POLESUK, PERI POLESUK and CAMERON POLESUK

Plaintiffs,

- against -

CBR SYSTEMS, INC. a/k/a CORD BLOOD REGISTRY SYSTEMS, Q INTERNATIONAL COURIER, INC. a/k/a Quick International Courier and AMERICAN AIRLINES, INC.

Defendants.

-- X

Civil Action No.

NOTICE OF REMOVAL

RECEIVED
SEP 27 2005
U.S.D.C. S.D. N.Y.
CASHIERS

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Defendant American Airlines, Inc. ("American Airlines") hereby files this Notice of Removal of the above-captioned matter from the Supreme Court of the State of New York, County of New York, Index No. 05/107688 to the United States District Court for the Southern District of New York. In support of the removal, American Airlines respectfully states:

I.

STATE COURT ACTION

1. On or about June 2, 2005, Plaintiffs served a Summons with Notice on American Airlines, alleging negligence, fraud, and breach of contract in the amount of $2 million, plus costs and attorneys fees with interest from June 5, 2005. A copy of the Summons with Notice is attached hereto as Exhibit A.

2. On July 13, 2005, counsel for American Airlines served on counsel for Plaintiffs a Notice of Appearance and Demand for a Complaint. A copy of the Notice of Appearance and Demand for Complaint is attached hereto as Exhibit B.

3. On or about September 1, 2005, Plaintiffs served a Complaint on American Airlines alleging that American was negligent in transporting Plaintiff Cameron Polesuk's umbilical cord blood ("cord blood") by air from New York to Arizona. A copy of the Complaint is attached hereto as Exhibit C.

4. This Notice of Removal is timely filed under 28 USC § 1446(b), being within thirty (30) days of receipt of the Complaint at which time it was first ascertained that this matter was removable under 28 USC § 1331.

II.

BASIS FOR REMOVAL

5. American Airlines is an air carrier engaged in interstate commerce. According to the Complaint, Plaintiffs allege that American Airlines was negligent in transporting Plaintiff Cameron Polesuk's cord blood by air from New York to Arizona and seeks to recover approximately $2 million in damages. Plaintiffs' claims raise federal question jurisdiction based on (1) the federal common law that controls an action seeking to recover damages against an airline for lost or damaged shipments; and (2) preemption. The United States District Court for the Southern District of New York has original jurisdiction over this matter based on federal question. Specifically, jurisdiction lies under 28 USC § 1331, which provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

A. Federal Question Under Federal Common Law

6. Federal jurisdiction exists if the claims in the case arise under federal common law. Illinois v. City of Milwaukee, 406 I.S. 91, 100, 92 S.Ct. 1385, 1391 (1972) (concluding that Section 1331 jurisdiction will support claims founded upon federal common law as well as those of statutory origin). Courts have held that private civil suits against air carriers for lost or damaged goods arise under federal common law. See, e.g., Sam L. Majors Jewelers v. ABX, Inc., et al., 1771 F.3d 922, 929 (5th Cir. 1997) (holding that the shipper's causes of action against the interstate air carrier for property loss or damage arose under federal common law and, therefore, a federal cause of action exists for freight claims against air carriers).

B. Federal Question Under Preemption

7. Plaintiffs have asserted a number of state law claims against American Airlines which relate to the services it provides as an air carrier. Congress has exhibited an intent to preempt state law causes of action such as the types of claims brought by Plaintiffs herein. The Air Deregulation Act of 1978 ("ADA") expressly provides:

> A state . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law relating to a price, route or service of an air carrier that may provide air transportation under this subpart.

49 USC § 41713(b)(1); See Morales v. TransWorld Airlines, Inc., 504 U.S. 374, 384, 112 S.Ct. 2031, 2037 (1992) (explaining that the phrase "relating to rates, routes, or services" in the ADA was "deliberately expansive" and preempted any "state enforcement action having a connection with a reference to airline rates, routes, or services"); American Airlines, Inc. v. Woolens, 513 U.S. 219, 228, 115 S.Ct. 817, 824 (1995) (expanding upon ADA preemption as a device to

protect the deregulation of the airline industry by preventing the "application of restrictive state laws").

8. Under 28 USC § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

9. American Airlines will promptly give Plaintiffs written notice of the filing of this Notice of Removal as required by 28 USC § 1446(d). A true copy of this petition will be filed with the Clerk of the Supreme Court of the State of New York, County of New York, as provided by law.

III.

CONSENT OF DEFENDANTS

10. Removal is effectuated in this case by American Airlines with the consent of the other two co-defendants, CBR Systems Inc. a/k/a Cord Blood Registry Systems ("CBR Systems") and Q International Courier, Inc. a/k/a Quick International Courier ("Quick"). Counsel for American Airlines spoke with counsel for CBR Systems and Quick, who provided consent on behalf of both CBR Systems and Quick respectively for American Airlines to sign this Notice of Removal on their clients' behalf. Accordingly, all served defendants have joined in this Removal.

Dated: September 27, 2005
New York, New York

MOUND COTTON WOLLAN
& GREENGRASS

Attorneys for Defendant
American Airlines, Inc.

Jodi S. Tesser (6398)

CONSENT BY CBR SYSTEMS, INC. a/k/a CORD BLOOD INDUSTRY

By: Anthony Grande (with permission)
Anthony Grande

CONSENT BY Q INTERNATIONAL COURIER, INC. a/k/a QUICK INTERNATIONAL COURIER

By: John Sandercock (with permission)
John Sandercock

TO: Steven R. Goldberg, Esq.
Attorneys for Plaintiffs
One North End Avenue - Suite 1107
World Financial Center
New York, New York 10282
(212) 845-5100

Anthony D. Grande, Esq.
Morgan, Melhuish, Monaghan
Arvidson, Abrutyn & Lisowski
Attorneys for Defendant
CBR Systems Inc. a/k/a
Cord Blood Registry Systems
39 Broadway - 35th Floor
New York, New York 10006
(212) 809-1111

John Sandercock, Esq.
Lester Schwab Katz & Dwyer, LLP
Attorneys for Defendant
Q International Courier, Inc. a/k/a
Quick International Courier
120 Broadway
New York, New York 10271
(212) 964-6611

Exhibit A

Received at: 4:16PM, 7/12/2005

07/12/05 TUE 14:14 FAX 817 967 2406 AMR-CARGO CLAIMS 003

/2005 09:38 8179317131 CORP INS PAGE 05

FILED ON JUNE 2, 2005

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

---X

JONATHAN D. POLESUK, PERI POLESUK
and CAMERON POLESUK

Plaintiffs,

-against-

SUMMONS

Index #: 05107688

CBR SYSTEMS INC. a/k/a CORD BLOOD
REGISTRY SYSTEMS,
Q INTERNATIONAL COURIER, INC. a/k/a
Quick International Courier and
AMERICAN AIRLINES, INC.

Defendants.

---X

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Please take notice that the nature of this action and the relief sought is to recover damages for negligence, fraud and breach of contract, and that case of your failure to appear judgment will be taken against you by default for the sum of not less than TWO MILLION DOLLARS ($2,000,000.00) plus attorney fees with interest from June 5, 2003, plus costs and disbursements of this action.

Dated: June 2, 2005
New York, New York

STEVEN R. GOLDBERG, ESQ.
Attorney for Plaintiff(s)
One North End Avenue, Ste. 1107
World Financial Center
New York, New York 10282
(212) 845-5100

Received at: 4:16PM, 7/12/2005

07/12/05 TUE 14:14 FAX 817 967 2406 AMR-CARGO CLAIMS 004

07/07/05 THU 08:19 [TX/RX NO 9290]

State of New York - Department of State
Division of Corporations

Party Served:
AMERICAN AIRLINES, INC.

Plaintiff/Petitioner:
POLESUK, JONATHAN D

C/O C T CORPORATION SYSTEM
111 EIGHTH AVENUE
NEW YORK, NY 10011

Dear Sir/Madam:
Enclosed herewith is a legal document which was served upon the Secretary of State on 06/16/2005 pursuant to SECTION 306 OF THE BUSINESS CORPORATION LAW. This copy is being transmitted pursuant to such statute to the address provided for such purpose.

Very truly yours,
Division of Corporations

Received at: 4:16PM, 7/12/2005

07/12/05 TUE 14:14 FAX 817 967 2406 AMR-CARGO CLAIMS 002

/2005 09:38 8179317131 CORP INS PAGE 03

CT CORPORATION
A WoltersKluwer Company

Service of Process Transmittal
06/23/2005
Log Number 510323500

TO: Bobbye Manire
American Airlines, Inc.
4333 Amon Carter Blvd.
Fort Worth, TX, 76155

RE: **Process Served in New York**

FOR: American Airlines, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Jonathan D. Polesuk, Peri Polesuk and Cameron Polesuk, Pltfs. vs. CBR Systems Inc., etc., et al., including American Airlines, Inc., Dfts.
DOCUMENT(S) SERVED:	Summons.
COURT/AGENCY:	New York County: Supreme Court of the State of New York, NY Case # 05107888
NATURE OF ACTION:	To recover damages for negligence, fraud and breach of contract.
ON WHOM PROCESS WAS SERVED:	C T Corporation System, New York, NY
DATE AND HOUR OF SERVICE:	By Certified Mail on 06/23/2005 postmarked on 06/20/2005
APPEARANCE OR ANSWER DUE:	Within 20 Days.
ATTORNEY(S) / SENDER(S):	Steven R. Goldberg, Esq. One North End Avenue, Suite 1107 World Financial Center New York, NY, 10282 212-845-5100
REMARKS:	Papers were served on the New York State Secretary of State on 6/15/05.
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day, 791114047295 Email Notification, Bobbye Manire bobbye.manire@aa.com CC Recipient(s) Charles D MarLett, via Regular Mail
SIGNED: PER: ADDRESS:	C T Corporation System Christopher Tilton 111 Eighth Avenue New York, NY, 10011
TELEPHONE:	212-894-8940

RECEIVED
JUN 27 2005
Corporate Insurance

Page 1 of 1 / EB

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action.

CC: Charles D MarLett
American Airlines, Inc.
MD 5675, 4333 Amon Carter Blvd.
Ft. Worth, TX, 76155

07/07/05 THU 08:19 [TX/RX NO 9290]

Exhibit B

C 131—Notice of Appearance — JULIUS BLUMBERG, INC. LAW BLANK PUBLISHERS

SUPREME COURT INDEX 107688/05

COUNTY OF NEW YORK STATE OF NEW YORK

JONATHAN D. POLESUK, PERI POLESUK and CAMERON POLESUK

Plaintiff(s)

against

CBR SYSTEMS, INC., a/k/a CORD BLOOD REGISTRY SYSTEMS, Q INTERNATIONAL COURIER, INC., a/k/a Quick International Courtier and AMERICAN AIRLINES, INC.

Defendant(s)

Notice of Appearance

SIR

Please Take Notice, *That the defendant* AMERICAN AIRLINES, INC.

hereby appear(s) in the above entitled action, and that the undersigned have been retained as Attorney(s) for said Defendant(s) and demand(s) that a copy of the Complaint and all papers in this action be served upon the undersigned at the office and post office address stated below.

Dated: July 13, 2005

Yours, etc.

FRANCIS A. MONTBACH
MOUND COTTON WOLLAN & GREENGRASS
Attorney(s) for Defendant
American Airlines, Inc.
Office and Post Office Address
One Battery Park Plaza
New York, NY 10004

To STEVEN R. GOLDBERG

*Attorney(s) for Plaintiff*s

One North End Avenue, Suite 1107
World Financial Center
New York, NY 10282

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MARIAN KELLY being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and resides in Maywood, New Jersey.

That on the 13th day of July, 2005 deponent served the within NOTICE OF APPEARANCE upon:

STEVEN R. GOLDBERG, ESQ.
Attorney for Plaintiffs
One North End Avenue, Suite 1107
World Financial Center
New York, NY 10282

the address designated by said attorney for that purpose by depositing the same enclosed in a postpaid properly addressed wrapper directed to each of said attorneys at the above addresses in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Marian Kelly

Marian Kelly

Sworn to before me this
13th day July, 2005.

Irene Siegel

Notary Public

IRENE SIEGEL
Notary Public, State of New York
No. 41-4872330
Qualified in Queens County
Commission Expires October 14, 20 06

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
____X

JONATHAN D. POLESUK, PERI POLESUK
and CAMERON POLESUK

COMPLAINT

Plaintiffs,

-against-

Index # 05/107688

CBR SYSTEMS INC. a/k/a CORD BLOOD
REGISTRY SYSTEMS,
Q INTERNATIONAL COURIER, INC. a/k/a
Quick International Courier and
AMERICAN AIRLINES, INC.

Defendants.

____X

Plaintiffs, JONATHAN D. POLESUK, PERI POLESUK and CAMERON POLESUK ("POLESUKS"), by their undersigned attorney, STEVEN R. GOLDBERG, ESQ., for their complaint against the defendants, CBR SYSTEMS INC. a/k/a CORD BLOOD REGISTRY SYSTEMS, Q INTERNATIONAL COURIER, INC. a/k/a Quick International Courier and AMERICAN AIRLINES, INC. alleges, upon information and belief:

PARTIES

1. Plaintiffs JONATHAN D. and PERI POLESUK are a married couple who reside in the City of Scarsdale, County of Westchester, State of NewYork.

2. Plaintiff CAMERON POLESUK is the son of JONATHAN D. and PERI POLESUK, and was born on June 4, 2003.

3. Defendant CORD BLOOD REGISTRY ("CBR"), is a clinical-stage biotechnology company in the business of, among other things, collecting, testing, processing, and preserving umbilical cord blood ("Cord Blood")—a procedure known as "banking."

4. Defendant QUICK INTERNATIONAL COURIER ("QUICK") is in the business of, among other things, providing time-sensitive domestic and international courier services.

5. Defendant AMERICAN AIRLINES, INC. is in the business of providing air transportation for passengers and freight domestically and internationally.

BACKGROUND

6. CBR states that it is the world leader in cord blood stem cell banking.

7. Cord Blood, which is also called "placental blood," is the blood that remains in the umbilical cord and placenta following birth and after the cord is cut. In the past, cord blood was routinely discarded with the placenta and umbilical cord.

8. The stem cells found in the cord blood are genetically unique to the baby and the family.

9. The actual and potential uses of neonatal stem cells found in cord blood to treat and cure disease are significant and growing.

10. By banking a child's cord blood at birth, parents ensure the child will have a compatible source of stem cells for future therapeutic use, and also substantially increase the likelihood of locating compatible stem cells for use by related family members.

11. CBR states that cord blood has been used successfully to aid and assist in therapeutic

uses.

12. Collecting and storing a child's cord blood is a once in a lifetime opportunity and should be stored no later than 32 hours after birth.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST CBR (FRAUD)

13. Plaintiffs repeat and re-allege/state each and every allegation contained in Paragraphs 2 through 12 with the same force and effect as if fully set forth herein.

14. On or about February 2003, CBR contacted Plaintiff Peri Polesuk, after discovering that she was pregnant, in order to encourage her to use CBR's services.

15. On or about February 2003, CBR forwarded to Peri Polesuk its various promotional materials to assist her in making a decision to utilize CBR's services.

16. The promotional and registrations materials from CBR in which CBR represented that it was "The Name to Trust" and that it "is the most trusted name in cord blood banking." CBR also advertised that it was the "gold standard."

17. On or about May 2003, via the CBR website, CBR also made the following representations to prospective customers with regard to the transportation of the Cord Blood to CBR:

> "One-Step shipping service, which requires only a single phone call after your baby's birth. CBR's systems are fully integrated with Quick International Courier to provide easy pick-up and seamless tracking...."

and

> "CBR offers simple, prearranged shipping with an experienced courier, requiring only one phone call after your baby's birth. Our automated tracking system is designed to help facilitate timely delivery of your baby's cord blood to our laboratory. You can relax with your new baby while we track your sample every step of the way."

18. CBR charges customers a fee of $1385.00 (comprising an enrollment fee of $295.00 and a fee of $995.00 once the specimen has been processed) to oversee the collection, shipment, testing, and processing of Cord Blood following the birth of a child. For a further fee of $95.00 per year, CBR cryogenically preserves the Cord Blood unit for potential future use in stem cell therapy for the child or other family members.

19. The representations made by CBR were in fact false. The true facts were that CBR did not use adequate level of standards to transport the Polesuks' newborn son's Cord Blood units to CBR's Cord Blood Banking facility, given the nature and importance of the shipment.

20. In particular, CBR did not have a secure chain of custody for Cord Blood shipments in place to ensure delivery within 32 hours of birth, nor did CBR have a system in place to adequately handle and protect the shipment of this sensitive irreplaceable good.

21. In fact, CBR couriers from QUICK do not hand-carry their Cord Blood shipments to CBR's Cord Blood banking facility located in Arizona.

22. Rather, the QUICK couriers would place the Cord Blood shipments on regularly scheduled airline flights to Arizona, and other QUICK couriers would pick up the shipments from the airlines' baggage terminal at the other end. In fact, the Cord Blood shipments are transported and handled as any other non-perishable item.

23. Given the nature of the specimens, greater care should have been taken with the materials.

24. When CBR contacted the Polesuks and later detailed the regular procedures the company used in obtaining, delivering and storing their enfant son's Cord Blood, the Polesuks were induced to rely on the ease of shipping the Core Blood.

25. CBR made these representations with the intention to induce Plaintiffs to act in reliance on them in contracting for its Cord Blood Banking services, or with the expectation that Plaintiffs would so act.

26. Plaintiffs, at the time CBR made these representations and at the time they contracted with CBR for Cord Blood Banking services, were ignorant of the falsity of CBR's representations and its secret intention not to perform as promised, and could not, in the exercise of reasonable diligence, have discovered the falsity of CBR's representations.

27. On or about May 23, 2003, in reliance on these representations, Plaintiffs entered into a contract with CBR for the collection, shipment, processing, and storage of their son's Cord Blood (the "Cord Blood Banking Agreement").

28. Had Plaintiffs known the actual facts about CBR's Cord Blood Banking services, they would not have agreed to enter into the Cord Blood Banking Agreement.

29. Immediately after Plaintiff's son was born on June 4, 2005, CBR arranged for a courier from Quick to pickup Plaintiff's Cord Blood units for transport to CBR's Cord Blood Banking facility located in Arizona.

30. Plaintiffs have performed all of the conditions and obligations on their part to be performed under the terms of the Cord Blood Banking Agreement, except to the extent that they have been prevented or excused from doing so by the acts, breaches, and omissions of Defendants.

31. Twenty four hours after handing over his infant son's Cord Blood, Plaintiff Jon Polesuk contacted CBR to confirm that Plaintiff's Cameron's Cord Blood had been received at the storage facility.

32. Plaintiff Jon Polesuk was told that his infant son's Cord Blood had been destroyed.

33. At no time prior to Plaintiff's call did CBR contact Plaintiffs to advise Plaintiffs that the Cord Blood had been destroyed.

34. According to CBR, Plaintiff Cameron's Cord Blood was destroyed in Dallas, Texas. Plaintiff Jon Polesuk was told that Plaintiff Cameron Polesuk's Cord Blood had been in a box, stationed on a luggage cart, on a tarmac in Dallas and that a sudden gust of wind blew the box off the luggage cart and a truck subsequently ran over the box and Infant Polesuk's Cord Blood was not salvageable.

35. CBR did not use the promised highest level of standards to transport Plaintiff's Cord Blood units to the CBR Cord Blood Facility located in Arizona. In particular, CBR did not have a secure chain of custody in place for Plaintiff's Cord Blood shipment to ensure delivery within 24 hours of birth.

36. The Quick Courier arranged for by CBR did not hand-carry Plaintiff's Cord Blood units to the CBR Cord Blood Banking Facility. Rather, the Quick Courier attempted to place the Plaintiff's Cord Blood units on an American Airlines flight to Arizona.

37. While the Cord Blood was being transported from the Quick Courier to American Airlines, the Cord Blood units were completely destroyed.

38. CBR's conduct was an intentional misrepresentation, deceit, or concealment of a material fact known to it and made with the intention of thereby depriving Plaintiffs of property or legal rights, or otherwise causing injury, and was despicable conduct that subjected Plaintiffs to cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and/or punitive damages.

39. As a proximate result of the fraudulent conduct of CBR as alleged herein, Plaintiffs have been damaged in an amount to be proven at trial but not less than TWO MILLION DOLLARS ($2,000,000.00).

AS AND FOR A SECOND CAUSE OF ACTION AGAINST CBR (BREACH OF CONTRACT)

40. Plaintiffs repeat and re-allege/state each and every allegation contained in Paragraphs 2 through 12 and Paragraph 14 through 38 with the same force and effect as if fully set forth herein.

41. CBR breached its agreement with Plaintiffs by failing to use its promised highest level of standards to transport Plaintiff's Cord Blood units to CBR's Cord Blood Banking facility located in Arizona; failing to have a secure chain of custody in place for Plaintiff's Cord Blood shipment to ensure delivery within 24 hours of birth and failing to have a proper standard of care for handling such fragile and irreplaceable goods.

42. Based on the foregoing, CBR breached it agreement with Plaintiffs and Plaintiffs have been damaged in an amount to be proven at trial but not less than TWO MILLION DOLLARS ($2,000,000.00).

AS AND FOR A THIRD CAUSE OF ACTION AGAINST CBR, QUICK AND AMERICAN AIRLINES (NEGLIGENCE)

43. Plaintiffs repeat and re-allege/state each and every allegation contained in Paragraphs 2 through 12 and Paragraphs 14 through 38 and 41 with the same force and effect as if fully set forth herein.

44. CBR was negligent by failing to use its promised highest level of standards to transport Plaintiff's Cord Blood units to CBR's Cord Blood Banking facility located in Arizona; failing to have a secure chain of custody in place for Plaintiff's Cord Blood shipment to ensure delivery within 24 hours of birth and failing to have a proper standard of care for handling such fragile and irreplaceable goods.

45. Quick was negligent by failing to use its promised highest level of standards to transport Plaintiff's Cord Blood units to CBR's Cord Blood Banking facility located in Arizona; failing to have a secure chain of custody in place for Plaintiff's Cord Blood shipment to ensure delivery within 32 hours of birth and failing to have a proper standard of care for handling such fragile and irreplaceable goods.

46. American Airlines was negligence by failing to use its promised highest level of standards to transport Plaintiff's Cord Blood units to CBR's Cord Blood Banking facility located in Arizona; failing to have a secure chain of custody in place for Plaintiff's Cord Blood shipment

to ensure delivery within 24 hours of birth and failing to have a proper standard of care for handling such fragile and irreplaceable goods.

47. Based on the foregoing, CBR, Quick and American Airlines were negligence in the handling of the Cord Blood units and were the proximate and direct cause of its loss.

48. As a result of CBR, Quick and American Airlines breaches of its agreement with Plaintiffs, Plaintiff's have been damaged in an amount to be proven at trial but not less than TWO MILLION DOLLARS ($2,000,000).

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST QUICK AND AMERICAN AIRLINES (NEGLIGENT INTERFERENCE WITH CONTRACT)

49. Plaintiffs repeat and re-allege/state each and every allegation contained in Paragraphs 2 through 12 and Paragraph 14 through 38 and 41 and Paragraphs 45 and 46 with the same force and effect as if fully set forth herein.

50. Plaintiffs allege on information and belief that defendants QUICK and AMERICAN AIRLINES, INC., were informed and aware when they entered into the above described contracts with CBR for the transportation of Plaintiffs' Cord Blood, that their failure to deliver the Cord Blood to CBR's Cord Blood Banking facility in a timely fashion, and in no event more than 32 hours after birth, could threaten the viability of the Cord Blood for use in future stem cell transplantation.

51. Defendants QUICK and AMERICAN AIRLINES, INC. nevertheless negligently failed to transport Plaintiffs' Cord Blood in a timely fashion, in that they failed to take ordinary and basic precautions to protect the Plaintiffs' Cord Blood shipment and to treat it

as a fragile, perishable and unique item.

52. As a result, Plaintiffs' Cord Blood was destroyed and its future use lost and irreplaceable.

53. As a result of the above described negligence, Plaintiffs have been damaged in an amount to be proven at trial but not less than TWO MILLION DOLLARS ($2,000,000).

DATED: September 1, 2005

By: ______________________

Steven R. Goldberg, Esq.
Attorney for Plaintiffs
JON POLESUK, PERI POLESUK
and CAMERON POLESUK
One North End Avenue
Suite 1107
New York, New York 10282
Telephone: 212-845-5100

To:

Attorney for CBR Systems
Anthony D. Grande, Esq.
Morgan, Melhuish, Monaghan
39 Broadway- 35th Floor
New York, New York 10006
Telephone: 212-809-1111

Attorney for Quick International Inc.
Richard Granofsky, Esq.
Lester Schwab Katz & Dwyer, LLP
120 Broadway
New York, New York 10271
Telephone: 212-964-6611

Attorney for American Airlines, Inc..
Francis A Montbach, Esq.
Mound Cotton Wollan & Greengrass
One Battery Park Plaza
New York, New York 10004
Telephone: 212-804-4200

STATE OF NEW YORK)

COUNTY OF NEW YORK)

AFFIDAVIT OF SERVICE

Lynn Cappiello, being duly sworn, deposes and says:

That deponent is not a party to this action, is over the age of 18 years and resides in Nassau County, New York.

That on September 27, 2005, deponent served the within **NOTICE OF REMOVAL** upon :

Steven R. Goldberg, Esq.
One North End Avenue - Suite 1107
World Financial Center
New York, New York 10282
John Sandercock, Esq.

Lester Schwab Katz & Dwyer, LLP
Q International Courier, Inc. a/k/a
Quick International Courier
120 Broadway
New York, New York 10271

Anthony D. Grande, Esq.
Morgan, Melhuish, Monaghan
Arvidson, Abrutyn & Lisowski
CBR Systems Inc. a/k/a
Cord Blood Registry Systems
39 Broadway - 35th Floor
New York, New York 10006

the addresses designated by said entities for that purpose by depositing the same enclosed in a first-class postpaid properly addressed wrapper to said entities at the above addresses in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Lynn Cappiello

Sworn to before me this 27th day of September, 2005

NOTARY PUBLIC

IRENE SIEGEL
Notary Public, State of New York
No. 41-4872330
Qualified in Queens County
Commission Expires October 14, 20 06

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 05/107688

JONATHAN D. POLESUK, PERIL POLESUK
and CAMERON POLESUK

Plaintiffs,

- against -

CBR SYSTEMS, INC. a/k/a CORD BLOOD
REGISTRY SYSTEMS, Q INTERNATIONAL
COURIER, INC. a/k/a Quick International
Courier and AMERICAN AIRLINES, INC.

Defendants.

NOTICE OF REMOVAL

MOUND, COTTON, WOLLAN & GREENGRASS
Attorneys for

Office and Post Office Address, Telephone
ONE BATTERY PARK PLAZA
NEW YORK, NY 10004
(212) 804-4200

To:

Attorney(s) for

Service of a copy of the within is
hereby admitted.

Dated:____________________20______

____